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EXTRAORDINARY

PART II—Section 3

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No. 129] NEW DELHI, SATURDAY, MAY 23, 1953

ELECTION COMMISSION, INDIA
NOTIFICATION

New Delhi, the 12th May 1953

S.R.O. 960.—WHEREAS the election of Maharaja Anand Chand, resident of Ward No. 5, Chota Bazar, Nagar Bilaspur, Bilaspur State, as a member of the House of the People from the Bilaspur Parliamentary Constituency has been called in question by an election petition (Election petition No. 2 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Daulat Ram of Panjayaton, Pargana Bahadurpur, District and State Bilaspur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL BILASPUR

ELECTION PETITION No. 7 of 1952

V. B. Sarwate—*Chairman.*

R. B. Parshotam Lal—*Member.*

D. P. Nair—*Member.*

Petitioner:

Shri Daulat Ram S/o Sh. Lakhu Ram, Caste Brahman, resident of Panjayaton, Pargana Bhadurpur, District and State Bilaspur.

Versus

Respondents:

1. Maharaja Anand Chand S/o Raja Bijay Chand, Caste Rajput Chandel, resident of Ward No. 5, Chhota Bazar, Nagar Bilaspur, Pargana Sadar, Bilaspur State.
2. Shri Hargobind Singh S/o Sh. Shiv Singh, caste Rajput Chandel, resident of Dharar Sanl, Pargana Garhwin, Bilaspur State.
3. Shri Ram Lal S/o Sh. Bijay Ram, caste Rajput, resident of Manjhasu, Pargana Teon, Bilaspur, State.
4. Sh. Hardial Singh S/o Sh. Ram Saran, caste Rajput, resident of Ward No. 2, Rangnath, Nagar Bilaspur, Pargana Sadar, Bilaspur State, deceased (Struck off).

(1671)

ORDER DELIVERED ON 2ND MAY 1952

This election petition is by an elector in the Parliamentary Constituency of the State of Bilaspur for a declaration that the election of the respondent No. 1 Maharaja Anand Chand who is returned to the House of People from that Constituency is void. The respondents 2 and 3 Hargobind Singh and Ram Lal and Hardial Singh, who was joined in the petition as the 4th respondent but who is since dead, were duly nominated, but Hardial Singh and the respondents 2 and 3 withdrew their nominations under S. 87 of the Representation of the People Act 1951 with the result that the respondent No. 1 being left as the only person validly nominated was declared to be duly elected under S. 53(2) of the Act. The petitioner calls this election in question on various grounds of bribery and undue influence and eight instances of corrupt practices alleged in para 11 of the petition and of the alleged improper acceptance of the nomination of the respondent No. 1 who as a Director of the Bank of Bilaspur Ltd. and as a person in receipt of a Privy Purse as the Ex-Ruler of the Bilaspur State is said to be disqualified for being chosen as a Member of the Parliament. It is also urged that the election is void for the reason that public notice of the election under S. 31 of the R.P. Act 1951 was not properly given because it was published by the Returning Officer on 10th October 1951 fixing 15th October as the last date for filing nominations whereas the notice did not reach several places where it was directed to be published till the 17th October.

2. The corrupt practices charged against the respondent No. 1 are that he promised gratification to Hardial Singh and thus induced him to withdraw his candidature; that he first offered gratification to respondent No. 2 to induce him to stand for election by filing his nomination and later by offer of gratification induced him to withdraw his candidature; that similarly he offered and paid to the 3rd respondent gratification first to induce him to stand for election and later to withdraw from it; that he resorted to feeding on a large scale the members of the village panchayats to influence the voters; that he had threatened to cause physical injury and pecuniary loss to Hardial Singh and so interfered with the free exercise of his electoral right by Hardial Singh; that he threatened an elector Man Singh with injury when Man Singh wanted to offer as a candidate for the election; that he obtained assistance of certain Government servants named for furtherance of the prospects of his election and that his return of election expenses was false in material particulars.

3. All the respondents including Hardial Singh filed their written statements in which they controverted the allegations of the petitioner and averred that the allegations of corrupt practices were false and baseless. Hardial Singh who died after the filing of his written statement categorically denied therein that he was threatened with any injury or was offered anything of inducement to withdraw his nomination. He stated that he filed his notice of withdrawal under S. 37 because he found that with the respondent No. 3 Ram Lal in the contest in opposition to him and with the split in the local congress party and the likelihood of the District Congress working in support of Ram Lal, he could have no chance in the election.

4. On the pleadings the issues in this case are :—

- (1) Is the petitioner an elector in the constituency and, therefore, entitled to maintain the petition?
- (2) Was the first respondent under a disqualification to be elected a member of Parliament by reason of
 - (a) that he was a Director of the Bank of Bilaspur Limited in which the Government of India has financial interests; and
 - (b) that he held an office of profit under the Government by reason of being previously the Ruler of Bilaspur State and also by reason of his being in receipt of an allowance from out of the State revenue?
- (3) Did respondent No. 1 through his agent offer to respondent No. 4 Rs. 500/- per month and some other consideration in order to induce respondent No. 4 to withdraw his candidature?
- (4) Did respondent No. 1 offer to respondent No. 2 to obtain employment for him in order to induce him, that is, respondent No. 2 to first stand as a candidate for Parliament in this Constituency and later on for inducing him to withdraw his candidature, and in the same connection advanced him a sum of Rs. 500/- for making the necessary deposit in connection with his nomination paper?

- (5) Did respondent through his agent Shri Nand Lal promise respondent No. 3 to assist him in the prosecution of his service appeal filed with the Government of India and also to assist him with money in order to induce him to stand as a candidate against respondent No. 4 and later on to withdraw his candidature if so required by respondent No. 1?
- (6) Did Shri Dinna Nath agent of respondent No. 1 make a similar offer to respondent No. 3 and also promise to pay Rs. 500/- for the deposit of his necessary security?
- (7) Did respondent No. 1 pay Rs. 500/- for the security deposit of respondent No. 3 as a consideration for respondent No. 3 agreeing to stand as a candidate, and, if necessary, to withdraw his candidature?
- (8) Did Shri Dinna Nath agent of respondent No. 1 pay about Rs. 9,500 to respondent No. 3 as election expenses for respondent No. 3 in case of necessity?
- (9) Was respondent No. 1 guilty of treating by giving food on a large scale to the members of village panchayats at Bilaspur in his palace on 2nd October 1951.
- (10) Did Shri Gobind Ram Dhawara agent of respondent No. 1 on 20th October 1951 at Bilaspur exercise undue influence against respondent No. 4 by threatening with physical injury, pecuniary damage, and frivolous litigation, in order to induce respondent No. 4 to withdraw from his candidature?
- (11) Did respondent No. 2 with the connivance of respondent No. 1 exercise undue influence on Shri Man Singh of Raghunathpur in order to induce him not to stand as a candidate by threatening him with excommunication?
- (12) Did respondent No. 1 obtain assistance from Shri Nand Lal headman of village Chamani and member of the village panchayat to induce respondent No. 4 to withdraw from his candidature?
- (13) Did respondent No. 1 obtain assistance from Shri Dinna Nath, Subordinate Judge, Bilaspur, in order to induce respondent No. 4 to withdraw from his candidature?
- (14) Did respondent No. 1 obtain any assistance from Shri Nand Lal Sarpanch (headman) of village Jandot and village Munsif in order to induce respondent No. 4 to withdraw from his candidature?
- (15) Did respondent No. 1 obtain any assistance from Shri Prem Lal, Civil Supply Officer, for inducing Shri Dharam Dass not to stand for election?
- (16) In case the first respondent is found guilty of any or some of the corrupt practices mentioned in issues Nos. 3 to 15, has the result of the election been materially affected?
- (17) Has respondent No. 1 been guilty of filing a return of his election expenses which is false in the particulars mentioned in paragraph 15 of the list of particulars, if so, what is the effect?
- (18) Relief?

5. The above issues omitted to include one relating to the petitioner's contention in para 15 of the petition that the public notice under Section 31 of the R.P. Act 1951 was not duly published. The omission was brought to our notice at the opening of the trial on 26th March 1953 when we told the parties that in spite of the omission the point would be tried and determined. We find that the Returning Officer did issue a notice which is Ex. P6 as required by Section 31 of the R.P. Act and that it is in proper form. We were not referred to anything in the evidence or in the arguments to show that its publication contravened the provisions of the R.P. Act or the rules in any respect.

6. Issue No. 1 was raised because the respondent No. 1 did not want to admit any allegation of the petitioner. The electoral roll of the constituency which has been admitted in evidence shows the petitioner's name at serial number 56,323 and there is question of the petitioner's identity with the person whose name is entered there. We find that the petitioner being an elector is entitled to maintain the petition.

7. Issue No. 2.—The respondent No. 1 is no doubt a Director of the Bank of Bilaspur. He is in fact the President of the Board of Directors. We have some doubts

if in the Bank of Bilaspur we could find the Government of India to have any financial interest so that being its Director would make for disqualification for being a member of the House of the People under Section 7(A) read with Section 2(1)(a) of the R.P. Act. It seems to us that this disqualification was pleaded by the petitioner without any thought to the saving provided in the following Section 8(1)(e) according to which notwithstanding anything in section 7 a person shall not be disqualified under clause (e) of that Section by reason of his being a Director unless the office of such Director is declared by Parliament by law to so disqualify its holder. No such law is shown to have been passed by Parliament and the disqualification in issue No. 2(a) does not therefore operate.

8. The other disqualification in issue No. 2(b) is not also in our view operative. The respondent No. 1 under the Agreement of merger Ex. R-19 has no doubt been guaranteed a sum of Rs. 70,000 a year by the Central Government in return for giving up his rights to the State of Bilaspur but the point is whether by virtue of this arrangement he has rendered himself to be a holder of an office under the Government of India which should disqualify him under Article 102(1)(a) of the Constitution. The Privy Purse granted by the Government is unquestionably profit. But what is the office to which the respondent No. 1 can be said to be appointed by this merger agreement? Under the agreement he has been allowed to retain certain dignities as the ruler and has been assured a succession to such dignities and the Privy Purse also for his descendants but we cannot find that the privilege allowed to him of continuing to enjoy these dignities makes him the holder of office under the Government of India to whom he has surrendered his territory. An office as the Law Lexicon puts it may be a right to exercise a public or private employment or in other words the discharge of public functions. We do not find any public functions which the respondent No. 1 can be said to have undertaken to discharge for or on behalf of the Government of India for which he is being granted the amount of the Privy Purse. We have been referred to Arts. 366, 362 and 291 of the Constitution but cannot find anything in them to sustain the argument that as the ex-ruler of Bilaspur State, the respondent No. 1 has accepted a position which should make him employee of the Government of India. Section 168 of the Representation of the People Act 1951 should not in our view have been necessary if the Rulers of the former Indian States who have all entered into Agreements of merger like the respondent No. 1 had been disqualified under Art. 102 or 191 of the Constitution for being chosen as and for being members of Parliament or of State Legislature as holders of office of Profit under the Government of India. We find that the respondent No. 1 is not disqualified.

9. Issues Nos. 3, 10, 12, 13, and 14, may be dealt with and disposed of together. Regarding Hardial Singh who died after the settlement of issues the petitioner alleged commission of the corrupt practice by the respondent No. 1 in the following words:

"On 20th October 1951 at Bilaspur Town (Sankhayan Niwas) Shri Govind Ram Dabra agent of Maharaja Anand Chand, respondent No. 1 offered (on behalf of respondent No. 1) to respondent No. 4 Rs. 500 per mensem and a portion of the palace of respondent No. 1 for the residence of respondent No. 4, if the latter withdrew from his candidature. This agent also promised on behalf of respondent No. 1 to get the confiscated property of respondent No. 4 restored to him if he withdrew as aforesaid."

10. To appreciate precisely the allegations of this corrupt practice as also to understand the defence stated by the respondents it is necessary to set out the history of political activities in the Bilaspur State during the regime of the respondent No. 1 as the Ruler of the State till its merger and thereafter till the time of this election. In the time of the Raja an attempt was made by a few politically minded people in the State to organise a political institution described as Praja Mandal—the petitioner being one of the active workers of that body. This was looked upon with disfavour by the ruler and we have been told of instances of indirect persecution of the workers and hindrance in their activities. After the merger Congress organisation replaced the Praja Mandal and the Bilaspur State became a District Congress Committee area under the Himachal Pradesh State Congress. Hardial Singh had been in the service of the Bilaspur State in the time of Raja Bijay Chand the father of the respondent No. 1 and had been appointed his Minister by Bijay Chand. Later he came under disfavour and all his property in the State was forfeited in 1934. Hardial Singh then left the State and being a man of religious and philosophical disposition chose to settle down at Hardwar where he is said to have been leading the life of a recluse. In 1949 after the merger he was persuaded perhaps by the petitioner himself to return to Bilaspur

and head the Congress Organisation here. He started practice as a lawyer and having no house of his own began to live in the house of the petitioner in the premises styled 'Sankhiyan Niwas'. He was thus residing in Sankhiyan Niwas at the time when he filed his nomination paper and withdrew from the election. After the withdrawal, he moved in the adjoining house which he leased from the Government and in this house he continued to reside till his death. We find from the evidence that all was not well with the District Congress Committee of Bilaspur. In 1949 when Hardial Singh came to Bilaspur, Sada Ram was President of the District Congress Committee and Devi Ram was Secretary. In October, 1950 Hardial Singh was elected President. There was a group headed by one Ramji Dass which included the petitioner also which did not agree with Hardial Singh and who passed a vote of no confidence in him with the result that Hardial Singh had to resign the office of the District Congress Committee. This happened on the eve of the notification about this election to the House of the People.

11. In this election the Congress Party as a major political party in the country intended to put up a candidate and Hardial Singh was approved by the Parliamentary Board as a Congress nominee. Sada Ram was also an aspirant for Congress ticket and had applied for it but the Board decided in favour of Hardial Singh. This decision came a few days before the last date for filing nomination papers which was 15th October 1951. Between the time of making applications for Congress tickets and the filing of the nomination papers, Ramji Dass group in the local Congress seems to have asserted itself and forced Hardial Singh to resign the office of the President. This Hardial Singh is said to have done after Sada Ram had brought a motion of no confidence against Hardial Singh and the D.C.C. appointed Ramji Dass as President. Later the All India Congress Committee finding that dissensions had thus come to a head within the District Congress Committee, suspended the Committee and appointed an *ad-hoc* Committee of 12 men to carry on the Congress work in Bilaspur State. This *ad-hoc* committee consists of the petitioner as President and Devi Ram P.W. 16 as Secretary and Khazan Singh P.W. 6 as Vice President. The All India Congress Committee also took action against a number of the congress men for the turmoil created in the Congress working of the State and expelled some persons from the organisation as a disciplinary measure, namely Ramji Dass, Kashi Ram Bhandari and Sada Ram. Amongst those expelled was also Hardial Singh who seems to have been thus punished for his withdrawal of candidature which resulted in there being left no congress candidate for contesting the election on behalf of the Congress Party. All these facts may be gathered from the evidence of Devi Ram P.W. 16 and of the petitioner himself as P.W. 24.

12. The petitioner has produced two witnesses Khazan Singh P.W. 6 and Sher Singh P.W. 8 to prove the particulars of the corrupt practice as set out in para. 9 above. Khazan Singh states that on 20th October 1951 when he happened to be at the house of Hardial Singh Govind Ram Dabra came and told Hardial Singh that the Raja desired Hardial Singh to withdraw from the election and in return assured Hardial Singh a monthly allowance of Rs. 500 for maintenance and a room in his palace for residence. He also told Hardial Singh that the Raja would after his election to the Parliament use his good offices to persuade the States Ministry to pass favourable orders on the representation of Hardial Singh which was pending before the States Ministry against the confiscation of his property in 1934. It is said that Govind Ram Dabra also warned Hardial Singh that if Hardial Singh did not agree to his request then much harm may come to him because the respondent No. 1 was sure to be elected in the contest. It is stated that Hardial Singh was at first inclined to refuse the offer stating that he having been given the Congress ticket could not think of withdrawing but Govind Ram Dabra took him aside and talked to him with the result that Hardial Singh seemed to be inclined to consider the proposal. Thereupon Govind Ram Dabra left telling Hardial Singh that Pt. Dina Nath will also see him in a few days in this connection and have a detailed talk. The other witness Sher Singh according to Khazan Singh had also arrived at the house of Hardial Singh before Govind Ram Dabra came there and he as P.W. 8 has told much the same story.

13. Another set of two witnesses Devi Ram P.W. 16 and Sant Ram P.W. 18 wants us to believe what according to them Hardial Singh did on 22nd October 1951 and this we are asked to infer was the result of Govind Ram Dabra's interview on the 20th. Their evidence is that when they were at the house of Hardial Singh on the 22nd two persons Nand Lal of Ghumani and Nand Lal Zalidar of Bhagetu came and spoke to Hardial Singh to withdraw because they wished that the Raja should be declared elected unopposed. They also threatened Hardial Singh with dire consequences if he did not withdraw. The witnesses further say that in the afternoon when they again went to Hardial's house they did not find him but

after some search, he was found in the Sandhu Maidan where the Returning Officer has his office. There the two Nand Lals again came to Hardial and again pressed him to withdraw telling him that they could assure him on behalf of the respondent No. 1 full support and assistance in every respect. The witnesses in order to show that the two Nand Lals had been so influencing Hardial on behalf of the Raja, have stated that they had been seen coming out of the palace of the Raja in the Sandhu Maidan when they joined Hardial and induced him to withdraw. They also say that after thus talking in their presence the two Nand Lals took Hardial Singh to the office of the Returning Officer. We have it from the record of the Returning Officer that Hardial Singh filed his notice of withdrawal on 22nd October 1951 at 2 P.M. Pt. Dina Nath referred to by P.W. 6 had according to the solitary witness Durga Datt P.W. 23 visited Hardial Singh's house on 22nd October 1951 and asked him to withdraw his candidature. He is also said to have held out the promise of Rs. 500 a month and a room in the palace as an inducement coupled with a threat that his representation about property would fail if he persisted in contesting the election.

14. The story of these witnesses will make out the corrupt practice under S. 123 of the R. P. Act provided we can be induced to accept their evidence as truthful. We find however that the story told by all these witnesses is artificial and not easily acceptable. About Pt. Dina Nath's part in this affair of withdrawal of Hardial Singh, we have only the evidence of Durga Datt. This has been contradicted by Dina Nath himself as R.W. 3. Durga Datt is a member of the Ad-hoc committee of the Congress now formed under the leadership of the petitioner. His visit to Hardial Singh's house on 22nd October 1951 from his distant village Panjtehra is not also satisfactorily explained. We are unable to accept his evidence.

15. The burden of proving the corrupt practices is on the petitioner and the degree of proof requisite to establish charges of bribery and undue influence as are sought to be made out in this case, is the same as would be considered sufficient in a criminal court for securing a conviction. Viewed in this way the evidence of these witnesses does not inspire belief in the truth of the stories they tell. P.W. 6 is also a member of the Ad-hoc committee and so a man of the petitioner. Sher Singh P.W. 8 has admitted in cross examination, his activities as member of the Praja Mandal in consequence of which he had to suffer considerable harassment including a lathi charge by the police evidently under the orders of the respondent No. 1. He does not make any secret of his ill feeling towards the respondent No. 1. The visit of these men to Bilaspur on the 20th October and to the house of Hardial Singh on that day are not satisfactorily accounted for. Devi Ram P.W. 16 is one of the subscribers to the nomination paper of Hardial Singh filed on 15th October 1951 but that itself does not explain the necessity of his presence at Hardial's house on the 22nd October. He is a Secretary member of the present Ad-hoc Congress Committee and has been connected with the Congress Organisation in the State for many years. It is manifest that there was never any love lost between the respondent Raja and the Congress people in the State and the respondent has placed on record a number of communications Exs. R-2 to R-4 which this Devi Ram had been sending from the Congress office to the States Ministry against the Raja. This being the attitude of the Congress people generally towards the respondent No. 1 we feel we should be cautious in accepting the evidence of people like Devi Ram unless we find from the other circumstances that Hardial Singh was likely to act only in the way he is stated by these witnesses to have done and could not have acted otherwise. Sant Ram P.W. 18 had been in service in Civic Guards in 1946 but seems to have been removed from the service by the respondent No. 1 for his Praja Mandal activities. He was in the Congress Organisation also and was a member of the Congress while Hardial Singh had been President. He says he resigned from the Congress when Hardial Singh ceased to be the President. This to our mind had taken place before the date of nomination and we are not, therefore, impressed that this Sant Ram was likely to have gone to Hardial Singh's place on 22nd October 1951 to find out about the programme for election work.

16. The dissensions amongst the local Congress men cannot be doubted but it was urged on behalf of the petitioner that Hardial Singh had nothing to fear from them because it was the All India Congress Committee which had approved of his candidature and the Central Organisation had assured him of the support in the election and it did not matter whether a few local people like his candidature or not. Thus it is argued there could have been no other reason for him to think of withdrawing on 22nd October 1951 after filing his nomination papers on 15th October 1951 and after pressing for their acceptance on 19th October 1951 except the pressure brought upon him by the respondent No. 1 through Govind Ram Dabra and through the two Nand Lals. That this made it clear that Hardial Singh was

influenced during the three days following the acceptance of his nomination as deposed to by the petitioner's witnesses which led him to file notice of withdrawal at 2 P.M. on 22nd October 1951. Hardial Singh himself in the written statement which he filed stated in para. 10 the reason for his withdrawal in these words:—

"That respondent No. 4 withdrew his candidature from the election on 22nd October 1951 on his own realising that his chances of success had been reduced to nil by the entry of respondent No. 2 into the election and because the District Congress Committee was going all out to support him."

17. For the respondent No. 1 this has been vehemently pressed as the real reason for Hardial Singh's withdrawal. On the side of the petitioner there was an attempt to show that Hardial Singh was in very straitened circumstances so that it was possible for him to succumb to the temptation offered to him as stated by these witnesses which ensured him a comfortable living. It is suggested that Hardial Singh was also influenced by the promise held out to him of the assistance which the respondent No. 1 would give to get a favourable decision upon Hardial's petition for return of confiscated property. From the evidence of Bishan Dass P.W. 7 the Secretary to the Chief Commissioner of Bilaspur it appears that Hardial Singh had petitioned the State's Ministry on the 11th of September 1949, we have, however, no information whether the petition was still undisposed of in October 1951. Again Hardial Singh was a man of sufficient intelligence to understand that he could serve his own cause better in the matter of disposal of that petition by getting elected to the House of People than he could hope for that cause to be served through the respondent No. 1 under whose orders the confiscation had been made. We do not therefore think that Hardial Singh's mind could have been influenced by such assurance in the matter of disposal of petition. In fact we are inclined to think that though Hardial Singh had made that petition after a lapse of fifteen years, after the confiscation of the property in 1934 he had really done it without much hope of States Ministry accepting it.

18. The respondent has produced Nand Lal R.W. 4 who had been a clerk of Babu Hardial Singh to prove that Hardial Singh in the year 1951 had built up a fair amount of legal practice and earned about Rs. 4,000 by way of fees in that year. He does not thus appear to have been entirely without means of support as Dharam Dass P.W. would have us believe. We can however believe that he was not in such affluent circumstances that he would not care for a sum like these five hundred rupees which he had to deposit for his nomination. Dharam Dass P.W. 2 states that Hardial Singh had been enabled to deposit the amount by taking a loan from him. If this were a fact we think there would be the greater reason for Hardial Singh to see that he did not unnecessarily risk that amount. If he did not really hope for his success in the election as he stated in the written statement then it could be a prudent act in his opinion to withdraw from the election and so avoid the risk of forfeiture of security deposit. We also think that the entry of the respondent No. 3 Ram Lal in the election whether it was at the instance of respondent No. 1 or on his own initiative was calculated to divide whatever small number of votes should be secured in the name and with the support of Congress Organisation, in the contest against the respondent No. 1 who as the ex-ruler of Bilaspur still commanded considerable influence amongst the people of the State. Ram Lal respondent No. 2 had been a Sub Judge in the State service, but his services were dispensed with after the merger of the State. He was not, however, counting upon that position held by him for appealing to voters to support him. His strength appears to have been his brother Kishori Lal Bhandari who was a Congress man but who at this time was in the Camp of the Congress people ranged against Babu Hardial Singh. His purpose in coming up with his nomination paper was only with the object of spitting Hardial Singh as a congress candidate.

19. We have before us some telegrams which passed between Hardial Singh or District Congress Committee and the Himachal Pradesh Congress. These are to be found in a file which was produced from the office of Himachal Pradesh Congress. These show that at the time of the nominations for the Parliamentary Seat Hardial Singh had ceased to be the President of the District Congress Committee and Ramji Dass had taken that office. In spite of this Hardial Singh was willing to stand for the election since his candidature had been approved on recommendation made before these changes in the District Congress. On 16th October, the day after the filing of nomination Hardial Singh telegraphed to Himachal Pradesh Congress:

"Nomination filed Move immediately."

This shows the feeling in the mind of Hardial Singh that he had filed his nomination against the wishes of the local congressmen and therefore even from the time of the scrutiny of the nominations he expected the Himachal Congress to espouse his cause. The Pradesh Congress does not seem to have realised Hardial Singh's feelings and fears and does not seem to have sent him any assurances till it was revealed to them that he had withdrawn his candidature. On 22nd October Ramji Dass, President District Congress Committee telegraphed to Secretary Himachal Pradesh Congress:

"Hardial Singh withdrawn candidature without our knowledge or approval." It was then that the Pradesh Congress seem to have become fully alive to the situation in the District Congress Circles. They telegraphed to Hardial Singh:

"Publicity sent. Why withdrawn? Must stand under discipline. Every possible support. Will you duty bound fight?"

At the same time President District Congress Committee sent the following telegram to Himachal Congress:

"Hardial Singh Congress candidate sold congress ticket. Betrayed congress cause. Raja's clever move. Immediate inquiry invited."

20. We do not know if any inquiry was instituted and what was revealed because no papers regarding it have been placed before us. Hardial Singh himself must have informed the Himachal Congress about his withdrawal and possibly explained his reasons for the course he thus chose to adopt. The communication from him has not been produced before us but the next telegram from the Himachal Congress to Ramji Dass President D.C.C. shows that there must have been some communication in which there was mention of the name of Ram Lal. The telegram is:

"Wire next name of candidate. Who is Ram Lal? See Hardial Singh. Persuade him to stand."

Hardial Singh's withdrawal was irrevocable in law and no persuasion to him could help to mend matters. Ram Lal's position was clear to local congressmen that he had entered only to make Hardial Singh feel that he had come in to divide his votes with the help of the Congressmen in opposition to him and otherwise he could not be adopted nor would he be willing to stand as a Congress nominee in substitution of Hardial Singh. From the query about Ram Lal in this telegram it would, however, seem that Hardial Singh in explaining his withdrawal even at that earliest stage must have referred to his fears caused by the presence of respondent No. 3 Ram Lal in contest. Ram Lal was evidently unknown to the Pradesh Congress. He was not even a congress man but as already stated Hardial Singh was led to believe that Ram Lal was likely to get all the support of the local congress people through his brother Kishori Ram Bhandari who was in Ramji Dass's group. It is possible that Ram Lal was not really intended to be supported by local congressmen and Ram Lal's entry was only a clever move on the part of the Raja to make it appear to Hardial Singh that he could not expect to get any help from the local congressmen in the circumstances then obtaining in the local congress politics. The local congress men seem to have done nothing to remove such impression from Hardial Singh's mind. It thus appears to us probable that rightly or wrongly Hardial Singh did carry an impression in his mind that since Ram Lal has also come in contest he could hope for nothing from the District Congress and as the Pradesh Congress did not seem to him to be inclined to move in spite of his telegram of the 16th he had to decide to withdraw for the reasons stated by him in para. 10 of his written statement.

21. It may be that Hardial Singh was rather hasty in jumping to such conclusion, but we feel that there is a probable explanation of his withdrawal being due to the sorry state of affairs in the local congress politics due to which he thought he may be taking too great a risk in persisting to stand in the hope that Pradesh of All India Congress may come to his support later. We do not think that Hardial Singh as a sincere congressman, we believe him to have been, was yet possessed of such weak character that he would succumb to the temptation offered on behalf of the Raja as stated by the Petitioner's witnesses. We have no evidence of anything actually done in fulfilment of the tall promises of monthly allowance and residence to Hardial Singh on behalf of the Raja as stated by these witnesses. These circumstances do not thus lend support to the possibility of Hardial Singh having withdrawn only because of the temptation as alleged by the petitioner and otherwise the evidence of petitioner's witnesses fails to bring conviction to our mind as being credible and above suspicion. We therefore find the issues Nos. 3 and 10 and even issues Nos. 12, 13 and 14 (for the further reasons given in para. 41 below) in the negative.

22. *Issue No. 4.*—This issue arises of particulars stated in paragraphs 2, 3, 4 and 5 in the list of particulars which are as under:—

- “(2) On 15th October 1951 at Bilaspur Town (Sandu Maldan), Maharaja Anand Chand, respondent No. 1, offered to respondent No. 2 to get employment for him in the Soldier's Board, if the latter stood as a candidate and subsequently withdrew therefrom, if and when desired by the former. He also promised other pecuniary help, including food and lodging, for so doing.
- (3) On 15th October 1951, at Bilaspur Town, (Maharaja's Palace) Maharaja Anand Chand, Respondent No. 1 paid to respondent No. 2 Rs. 500 for making the required deposit along with nomination paper. This was on the understanding that the latter would first stand and then, if necessary withdraw in favour of respondent No. 1.
- (4) On 13th October 1951, at Bilaspur Town, (Bhandari Niwas), Sh. Nand Lal (of village Ghamani, Bilaspur State), member of village Panchayat, promised on behalf of respondent No. 1 to assist respondent No. 3 in the prosecution of his service appeal and also to give a large sum if the latter stood as a candidate against respondent No. 4 and withdrew from the candidature, if and when so required by respondent No. 1.
- (5) On 15th October 1951, at Bilaspur Town, (Bhandari Niwas), Shri Dina Nath Sub Judge 1st Class, Bilaspur as agent of Respondent No. 1 repeated the same thing as in para. 4 above and also promised to pay Rs. 500 for security deposit payable alongwith the nomination paper.”

23. The respondent No. 2 is a first cousin of respondent No. 1 the Raja. We have no doubt that he had filed his nomination merely as a covering candidate for the Raja, so that we may assume that he had offered himself as a candidate with the idea of contesting the election only in the event of its being found that Raja himself could not stand and that he was to step down if Raja's nomination was accepted. We do not think that such an arrangement between the Raja and respondent No. 2 if it was reached without any promise of consideration or reward, could be considered to be an interference with the free exercise of electoral right of Hargobind Singh.

24. But the attempt of the petitioner has been to show that the respondent No. 2 was induced to offer himself as a candidate for reward and later induced to withdraw his candidature on 22nd October 1951 by another inducement. On these points we have to consider the evidence of two witnesses P.W. 16 Devi Ram and P.W. 22 Munshi Ram. Munshi Ram would have us believe that on 15th October 1951 he had come from his village to Bilaspur and happened to go to the palace of the Raja and there he saw the Raja closeted with and paying a sum of Rs. 500 to respondent No. 2 Hargobind Singh for being deposited as security in connection with his nomination. He also says that the Raja told Hargobind Singh that he will get him appointed to the Soldier's Board. He has further stated that the Raja had paid him also a sum of Rs. 20 and asked him to carry on propaganda in his favour. There was no pleading and nothing in the particulars about this last mentioned payment to Munshi Ram and about the other statements made by this witness there is no evidence to corroborate him. We are not satisfied that this Munshi Ram was on such familiar terms with the Raja that he could go uninvited to the Raja's palace and could meet him in his private room where he was sitting and talking to his relatives and friends Hargobind Singh and Ram Lal. From the evidence of Shri Bishan Dass P.W. 7 we find that Hargobind Singh's application for the post of Secretary Soldier's Sailors and Airmen Board for the State of Bilaspur was made for the first time on 7th August 1952 and we find it hard to believe that the application would have been delayed for so many months if a promise of help for securing the appointment had been held out by the Raja to Hargobind Singh on 15th October 1951. Devi Ram P.W. 16 only states that he had seen Hargobind Singh coming from the palace and going to the Returning Officer where he made his deposit and filed his nomination paper. This statement can hardly be considered for corroboration of the evidence of Munshi Ram because Hargobind Singh is known to all to be staying in the palace when he is in Bilaspur. Though not ordinarily residing in Bilaspur, we have it in evidence that whenever he had occasion to visit Bilaspur he finds his lodgings in the palace as the next of kin of the Raja. Both respondent No. 1 as R.W. 1 and Hargobind Singh as R.W. 6 have denied that any such help of money or securing of employment was promised or given and we find issue No. 4 in the negative.

25. Issue Nos. 5, 6, 7 and 8, relate to the candidature of the 3rd respondent Ram Lal and arise out of the particulars stated in paragraphs 4, 6 and 7 of the list of particulars in the petition which are as under:—

- “(4) On 13th October 1951, at Bilaspur Town, (Bhandari Niwas), Sh. Nand Lal (of village Ghamani, Bilaspur State), member of village Panchayat, promised on behalf of respondent No. 1 to assist respondent No. 3 in the prosecution of his service appeal and also to give a large sum if the latter stood as a candidate against respondent No. 4 and withdrew from the candidature, if and when so required by respondent No. 1.
- (6) On 15th October 1951 at Bilaspur Town (Maharaja's Palace), Maharaja Anand Chand, respondent No. 1, paid Rs. 300 for security deposit to respondent No. 3 on the understanding that the latter would first stand and then, if required by respondent No. 1 withdraw in his favour.
- (7) On 18th October 1951, at Bilaspur Town (Bhandari Niwas) Shri Dina Nath Sub Judge 1st Class, paid on behalf of respondent No. 1 about Rs. 9,500 to respondent No. 3 to fight the election against respondent No. 4, and if necessary and so required by respondent No. 1 to withdraw in his favour i.e., in favour of respondent No. 1.”

Bhandari Niwas it may be mentioned here is the residence of respondent No. and his brother Kishori Lal Bhandari in Bilaspur town. Ram Lal had been in the state service as a Sub Judge before merger but his services were dispensed with in the retrenchment effected after the merger. We have from the evidence of Bishan Dass P.W. 7 that Ram Lal had made a representation to the Government of India on 21st May 1951 against his removal from service and Government's decision on it was conveyed on 5th November 1951. The representation was thus pending at the time of these nominations of October 1951. The particulars above stated refer to this as the 'service appeal'. Shri Dina Nath (R.W. 3) we may also mention here, is a young man who had been helped by the Raja with a Scholarship to complete his education and after passing his law examination had been given an appointment as a Sub Judge in the State by the Raja. He continued in service after the merger of the State but was later retrenched and is now practising as a lawyer in Bilaspur. He is made Secretary of the Kehloor Club which appears to be a political institution started by the Raja. Dina Nath's father and brother were officers in the State Police and we may safely assume that Dina Nath is an underling of the Raja.

26. The evidence on petitioner's side to be considered in respect of gratification and inducement offered to Ram Lal, is of Prem Lal P.W. 12, Nika Ram P.W. 13, Keshav Ram P.W. 14, Har Lal P.W. 15, Devi Ram P.W. 16, Bhal Singh P.W. 17 and Sunder Lal P.W. 19 and also Munshi Ram P.W. 22. Munshi Ram whose evidence we have considered on the allegation of Hargobind Singh having received Rs. 500 in Raja's palace, has also deposed about similar amount having been paid to Ram Lal by the Raja for deposit against his (Ram Lal's) nomination. Munshi Ram states that this amount was paid in the presence of Shri Ganpat Rai Parashar, Advocate, and Ganpat Rai and Ram Lal then left the palace. Munshi Ram states nothing about any condition having been attached by the Raja as stated in particulars No. 16. Ganpat Rai as R.W. 2 and Ram Lal himself as R.W. 7 have contradicted this story and Munshi Ram whose presence in the palace has been doubted by us in the matter of this evidence regarding the payment to Hargobind Singh cannot be considered to be credible on the point of this payment to Ram Lal.

27. About particular No. 4 referring to an arrangement arrived at on 13th October 1951, by which Ram Lal was induced to offer himself as a candidate we have to consider the evidence of Prem Lal P.W. 12 and Keshav Ram P.W. 14. Prem Lal keeps a cloth shop in Bilaspur and says that being a friend of Ram Lal he used to go to Ram Lal's house almost daily. He thus accounts for his presence at the house of Ram Lal on 13th October 1951. Keshav Ram is not a resident of Bilaspur but of a distant village. He explains that having come to Bilaspur he wanted to buy some cloth on credit from Prem Lal's shop but Prem Lal not being found in the shop and the man in charge having refused to sell on credit he (Keshav Ram) went in search of Prem Lal and found him at Ram Lal's house. Keshav Ram has given the date of this visit as 14th October 1951 which may be his mistake. From that discrepancy we wish to infer nothing. These witnesses then tell us that soon Nand Lal of Ghamani came there and told Ram Lal of the terms which the Raja Sahib was prepared to offer to him if he agreed to stand as a candidate in election in opposition to Hardial Singh. The terms offered were that the Raja would pay the necessary amount for security deposit and also expenses necessary to contest the election. Ram Lal was also assured that the Raja would see that

appeal of Ram Lal pending before the Government of India is decided in Ram Lal's favour. An other condition was that Ram Lal was to withdraw his nomination if it was found that Hardial Singh had withdrawn his nomination. We are also told that Nand Lal assured Ram Lal that Dina Nath would meet Ram Lal later and discuss the details of the arrangement.

28. We are not satisfied about the presence of these witnesses at the house of Ram Lal on the 13th October or of the fact of the visit of Nand Lal of Ghamani there. The time is stated to be the odd hour of 7 O'clock in the evening and we have no other evidence to show that Keshav Ram had really gone to Prem Lal's shop at that hour so as to be convinced that he could have been at the house of Ram Lal to find Prem Lal as he has stated. If Keshav Ram did really purchase cloth on credit from Prem Lal after leaving Ram Lal's house with him as he had stated, the fact could be corroborated by an entry in the account books of the shop which has not been done. We do not also understand why it should have been necessary for the Raja to make a big offer like this to induce Ram Lal to file his nomination paper. We can understand that Ram Lal may have desired the payment of security deposit by the Raja if he desired Ram Lal to file a nomination by way of Raja's counter move to Hardial Singh's candidature as congress nominee. But why should the question of paying all the election expenses as stated by these witnesses or a lump sum of Rs. 9,500 as stated in the particulars arise if the understanding was to be that Ram Lal was to withdraw his nomination when Hardial Singh withdrew his? In the event of Hardial Singh not withdrawing his nomination, if it became necessary for Ram Lal to remain in the contest, he could then require the Raja to pay all his election expenses and if the Raja made default Ram Lal could withdraw without any loss or damage to himself. We cannot therefore understand the promise to pay Rs. 9,500 much less the actual payment of that large amount on 18th October 1951 even before the scrutiny of the nomination and with a possibility of Ram Lal's nominations being rejected in this scrutiny. We find that Ram Lal has been friendly with the Raja not only since the time of these nominations but for long before that also and with such relations between the two it seems incredible for Ram Lal to be so exacting in his demands or for the Raja to be willing to offer such heavy price for the mere assent of Ram Lal to file a nomination paper. Ram Lal's nomination may have been filed with the purpose of bringing indirect pressure on Hardial Singh but surely Ram Lal would have been willing to do this for much smaller gain than what these witnesses would have us believe, he was promised. We do not therefore feel satisfied of the truth of the evidence of Prem Lal and Keshav Ram.

29. The next stage is to be found in the evidence of Har Lal P.W. 15 and Sunder Lal P.W. 19 who speak about the visit of Dina Nath to the house of Ram Lal on the morning of 15th October. Dina Nath having come then to fix up the details of previous proposal of which Ram Lal had been assured by Nand Lal of Ghamani in his visit of the 13th. These witnesses say that they had gone together to the house of Ram Lal and soon after Dina Nath came there. Dina Nath wanted Ram Lal to accompany him to fill in the nomination form but before Ram Lal would go, he desired that Dina Nath should first discuss and settle the details of the arrangement. Dina Nath then assured Ram Lal that not only the Raja would pay the amount of the security deposit but also all expenses in connection with the election. Sunder Lal adds that Dina Nath had also told Ram Lal that the Raja was promising to use his influence to get Ram Lal's appeal accepted. Har Lal in his evidence says nothing about this promise of the Raja in respect of Ram Lal's appeal. The witnesses say that after Ram Lal had received so much assurance from Dina Nath he agreed to go with Dina Nath. Here also we find it hard to believe the statements of these witnesses. They are not residents of Bilaspur. They live in different villages long way off from Bilaspur and want us to believe that they had come to Bilaspur independently and accidentally met in the Bazar in the morning. Sunder Lal wanted to go back to village in the company of Har Lal and so he joined Har Lal in the morning and the two went to Ram Lal's house because Har Lal wanted to take from him some medicine for a woman Tulsi of his village. And as these men happened to go to Ram Lal's house so casually they became witnesses to an important arrangement which was being negotiated by Dina Nath between the Raja and Ram Lal. Sunder Lal tells us that he had to hang about till 4 p.m. that day in Bilaspur for having the company of Har Lal on the return journey to his village. This story has only to be stated to be disbelieved and we are not prepared to find that any such arrangement was settled by Dina Nath in the presence of these witnesses. We need not mention that Dina Nath and Ram Lal in their evidence have given a lie to these witnesses.

30. The further stage in this story about Ram Lal is the payment of Rs. 500 to him by the Raja in his palace relating to which the evidence of Munshi Ram

has already been considered above. After this comes the evidence of Devi Ram P.W. 16 that on 15th October 1951 at about 1 P.M. he had seen Ram Lal and Ganpat Rai Parashar walking out from the Raja's palace and going to the office of the Returning Officer where Ram Lal deposited Rs. 500 and filed his nomination paper. After we have rejected the evidence of Munshi Ram this statement of Devi Ram becomes innocuous, for all that may be inferred from that circumstances is that Ram Lal had filed his nomination paper after some consultation with the Raja which we have no doubt he did, though we do not believe that he had done it in return for the reward or gratification as alleged by the petitioner.

31. Next we have to consider the evidence of Nika Ram P.W. 13 and Bhal Singh P.W. 17 who speak about the payment of Rs. 9,500 to Ram Lal as envisaged in particular No. 7. Here again we find two persons belonging to different villages in the interior of the Bilaspur State having a chance meeting in Bilaspur and deciding to go to the house of Ram Lal casually to become witnesses to an important incident of the payment of Rs. 9,500. Bhal Singh had no business of his own with Ram Lal but because Nika Ram wanted to have some consultation with Ram Lal about a matter which was pending in court of this same Dina Nath as Sub Judge, they state that they went to Ram Lal's house on 18th Oct. They found that Dina Nath arrived there soon after them and handed over an envelope to Ram Lal which was said to contain currency notes of Rs. 9,500 Dina Nath told Ram Lal that with Rs. 500 previously paid he would have received Rs. 10,000 in all. Ram Lal went to the first floor of the house to verify the contents of the envelope in secrecy and soon after returned and admitted to have found Rs. 9,500 in that envelope. The witnesses not only seek to prove the payment of this amount but also an admission of Ram Lal about an earlier payment of Rs. 500 which having been made in the palace of the Raja could be witnessed by the solitary witness Munshi Ram. The witnesses also attempt to make out that Dina Nath had come as agent of the Raja by stating that on inquiry by them they were told that the amount of Rs. 9,500 had been sent by the Raja and was to be used for fighting the election against Hardial Singh. If we could believe the witnesses on their statement that Dina Nath paid Rs. 9,500 in their presence, it would not require much effort on our part to find that Dina Nath was acting as agent of the Raja. If the amount was really paid it could not certainly come from the pocket of Dina Nath himself. The question however, is if the amount was really paid? On this point we think these witnesses cannot be believed. If for payment of Rs. 500 on account of security deposit Ram Lal had to be called to the palace according to the other witnesses of the petitioner, it is inconceivable that the Raja would allow Rs. 9,500 to be taken to Ram Lal's house and paid there to him in secrecy except for the chance presence of these two witnesses of the petitioner whom, of course, the Raja or Dina Nath could not trust. As we have stated before there was no reason for the Raja to be in such hurry to pay off this large amount even before the date of scrutiny of nominations or for Ram Lal to insist on its payment if the understanding was that Ram Lal had to withdraw if Hardial Singh withdrew his candidature. If the nomination paper of Ram Lal had been rejected in the scrutiny there would have remained no necessity of expending this amount by Ram Lal and witnesses do not say that there was anything settled about return of the amount under such conditions. Actually we find that respondent No. 1 had raised an objection to the nomination paper of Ram Lal but the Returning Officer did not uphold it. When these improbabilities are taken into consideration we cannot bring ourselves to believe the story of payment of Rs. 9,500. Dina Nath, Ram Lal and the respondent No. 1 have all stated on affirmation that the story told by these witnesses was not true. Nika Ram's excuse for going to the house of Ram Lal on that 18th October is that he had to consult Ram Lal about a suit which was fixed for hearing in court of the Sub Judge in that month (October). We were referred to the State Gazette showing that the whole month of October 1951 was vacation period for the Subordinate Court of Bilaspur. Thus there could be no case for hearing in that month which takes away the very basis of the visit of these witnesses to Ram Lal's house on 18th October 1951. We accordingly find that evidence is not credible to prove the allegations in any of the issue Nos. 5, 6, 7 and 8.

32. Issue No. 9.—This issue arises out of the particulars No. 8 which are stated as under:

"On 2nd October 1951 at Bilaspur Town at Maharaja's palace, Maharaja Anand Chand (respondent No. 1) gave feeding on a large scale to the members of village Panchayats with a view to influence them and other voters."

The reference here is to a meeting called by the respondent No. 1 at his palace on 2nd October 1951 to which the Panchas from all over the State numbering,

we are told, about 60 persons had been invited. The respondent No. 1 in his evidence has explained what these Panchas were. He states:

"Previously there existed Halqa Committees in the State. After merger the Central Government enforced the Panjab Panchayat Act in the State and Panchas were elected by the various Panchayats so established, previous Halqa Committees having been dissolved."

33. The election of these Panchas had taken place in April 1951. The respondent No. 1 was in Bilaspur after these elections till June when he left for Bombay. He returned from there towards the end of September and on 26th September 1951 he issued invitation to all the Panchas in the form like Exhibits P. 1 and P. 3 inviting them to a meeting at his palace in Bilaspur on 2nd October, 1951 at 2 P.M. The invitation contained the request to the invitees to reach Bilaspur before 12 Noon that day. In response to these invitations nearly all the Panchas who had been invited attended. The Raja was not in the palace at the time when these guests arrived. He had gone to village Ghumarwin to attend a 'mock election' there. He returned from there in the afternoon at about 4 P.M. Then he met the invitees and talked to them and addressed them. Meantime Hargobind Singh with the help of palace servants had made arrangements for providing meals to the invited persons. There was lunch at noon, tea was served in the afternoon and the Panchas dined at the palace at night and then dispersed.

34. There is no dispute about the above facts. The dispute is only as regards the object with which this meeting had been called and what was spoken to the assembled people by the respondent No. 1 and whether what took place that day would amount to the corrupt practice of bribery under Section 123(1) of the R. P. Act 1951.

35. The petitioner's case is that these Panchas had been invited with the object of enlisting their support in the impending election since the Raja contemplated offering himself as a candidate—the idea being to approach the entire electorate of the State through these representative Panchas. The respondent No. 1 on the other hand has stated in his evidence that he had no such purpose in view and had called the Panchas for a meeting as had been customary with him while he was Ruler of the State to occasionally meet the representatives of the people and discuss with them—some hospitality being extended to them on such occasions. According to him this was one of those traditional meetings and he had wanted to meet the people for three things in particular (1) to renew acquaintance with these people as great many of them had been in the old Halqa Committees also (2) to inform them about the talk which he had with the State Ministry concerning the Advisory Board about the Bhakra project which Board had to consider the interest of land owners of the 13 or 14 Halgas of the State which would be submerged in the Bhakra reservoir, and of the people in these who had consequently to be rehabilitated in the other Halgas of the State—some of these Panchas being actually co-opted on the Advisory Board subsequently and (3) to discuss with the Panchas about the reply to be given to the All India Congress Committee about his own organisation of the Kehloor Congress—a number of invited Panchas being members of *Ad hoc* Committee of that Kehloor Congress.

36. On the petitioner's side three of these invited persons have given evidence. They are Hanwant Singh P.W. 1, Sunder Lal P.W. 4 and Khazan Singh P.W. 6. They state that the Raja had talked to all the Panchas to help him to be elected to the Parliament from the Bilaspur Constituency and to carry on propaganda in his favour in the constituency. The question is whether we should accept the word of these witnesses that the Panchas had been addressed about the election only.

37. We have been referred to the terms of letter of invitation. The invitation mentions about the return of the Raja to Bilaspur on the previous day and then proceeds:

"I have heard this news with great pleasure that after the elections you have entered upon the responsibility of the office of Panchayat.

Now several important questions regarding Bilaspur have to be considered....."

Now it is urged for the petitioner that the important matter to be considered at the time could be the election only because it was going to be an important event in the affairs of Bilaspur State for which the invitations had to be issued so hurriedly immediately after the return of the Raja to Bilaspur. And that if this had been a meeting in the traditional style of the Ruler of the State graciously inviting his subject to meet him or for congratulating the Panchas only on their

election to the Panchayats, there should have been no such hurry in the matter. It is also pointed out that the elections to the Panchayats had taken place in April and after that if there was to be any meeting for congratulating the Panchas on their elections, they could have been called in the months of May and June while the Raja was still in Bilaspur. The respondent has offered an explanation of this by referring us to Gazette Notification about the election of these Panchas which appeared towards the end of May. It is pointed out that the Panchas must have entered upon their offices after these notifications which made the election final. When they so entered upon their offices, he was not in Bilaspur but had left for Bombay and for this reason he took the earliest opportunity of calling them as soon as he had returned to the State at the end of September. Our attention is invited to the terms of invitation letter referring to the assumption of office and not to the success at elections. We think there is nothing in the terms of the letter of invitation from which we could infer that the meeting was to be for the purpose of forthcoming election only and could not have been intended for other purposes as deposed to by the Raja.

38. In fact the respondent No. 1 wants to say that at the time he issued these invitations or even when he met these Panchas, he had not made up his mind to stand for the election and had not begun to hold himself out as a prospective candidate. He wants to say that he could not do it then because of his delicate position as an ex-ruler of the State. For this purpose he had a consultation with the Prime Minister of India and President of the Congress Pandit Nehru on 5th October after which he made up his mind to stand for election and held himself out as a candidate. Against this we have been referred on the petitioner's side to exhibit R. 9 which is a letter by the Chief Electoral Officer of Bilaspur to the Raja informing him the programme of election rehearsals or 'mock elections' as they have been referred to by the witnesses and "to suggest that you may attend these programmes and see for yourself the way in which the actual elections are to be conducted". These words it is urged are significant and show that the Chief Electoral Officer was aware on 1st October 1951 of the fact that the Raja proposed to contest the election. We may not infer any such thing from the terms of this letter or from the fact that the respondent No. 1 did actually attend the rehearsal at Ghumarwin on the 2nd of October, the day on which he had invited the Panchas to the Palace. We think that the Raja's word should be accepted that he would have stayed behind to receive the Panchas instead of going to Chumarwin if his object in calling them had been to humour them and to win them over for the forthcoming election. There had been an election rehearsal at Bilaspur on 23rd September while the Respondent No. 1 was away at Bombay. It is not suggested that any one had an idea then about the Raja's intention to stand for the election. Still in his absence the Chief Electoral Officer had issued an invitation to his Personal Assistant. We think such invitations were issued to prominent individuals and office bearers of some party organisations as persons who would be interested in knowing how elections were going to be conducted and not because the Electoral Officer had been made aware of the intentions of any such persons to offer themselves as a candidate.

39. On the side of respondent besides Raja's own statement the evidence of one man Balak Ram R.W. 5 has been given to show that at the meeting nothing was talked about the election. Balak Ram has been severely criticised as a man of doubtful character. We think that the onus of proving that what was said at the meeting would bring the case within the charge of bribery under Section 123(1) was on the petitioner, and the point is whether we are in a position to accept the statement of petitioner's three witnesses that election was the only matter referred to and the Raja pleaded for efforts by the Panchas in support of his candidature. The main difficulty in accepting these statements as true is that they are coming from persons who were known to be in the group of political opponents of the Raja and amongst the invited Panchas there were several others who were known politically not to be well disposed towards him. If his intention was to invite persons with the object of canvassing support through them we should have invited only those who could be expected to help him in the election and not the others who might try to come in his way on getting apprised of his intention to stand. We are not disposed therefore to accept the statement of the petitioner's witnesses that at the meeting on 2nd October the respondent No. 1 talked about support for his election. To attract section 123(1) it is necessary to show that the gratification, which according to the explanation would include all forms of entertainment should be offered by a candidate and the respondent contends that he was not a candidate on 2nd October since it was only after the 5th of October that he began to hold himself out as prospective candidate. Since we have accepted this statement of his we cannot relate the entertainment to his candidature according to the definition of candidate in Section 79 Clause (13) of the R. P. Act. Further we find that it has been traditional with the respondent

as ruler to provide meals to the people when they were invited from long distances to meet him at Bilaspur which tradition he had continued to maintain, even after he ceased to be a ruler after merger. We are not told that the entertainment offered was anything more than ordinary meals which persons of the status of those Panchas would take during the course of a day's stay. The entertainment offered was not thus exceeding the limits of customary hospitality and we agree with the view in *Shambhu Nath Vs. Gobind Parsad Singh* (Doabla's Indian Election Cases Vol. II, P. 411) that such customary hospitality is not within the term 'gratification'. We accordingly find that no corrupt practice under issue No. 9 is proved.

40. Issue No. 11.—Mathia Nam P.W. 3 and Ramditta P.W. 11 are the two witnesses who speak of undue influence upon Mianman Singh. In particular No. 10 this influence is stated to have been exercised by respondent No. 2 Hargobind Singh with the connivance of respondent No. 1 upon Man Singh at his residence in Raghunathpur by threatening him with ex-communication if he stood as a candidate for the election. Man Singh is a Kinsman of the respondents No. 1 and 2. He has not himself appeared before us to say if he really intended to stand for election and who dissuaded him from doing so. The witnesses say that they happened to go together to Man Singh's house and a little later Hargobind Singh came there and advised Man Singh not to stand for election in opposition to the Raja, pointing out how Man Singh stood to come to harm if he persisted in entering himself as candidate. The witnesses further say that before Hargobind Singh, Man Singh showed his disinclination to withdraw but after he had left, Man Singh expressed that he saw no alternative but to withdraw. According to Mathia Ram he was working as Mukhtiar of Man Singh in some cases and that may explain his presence at Man Singh's house. Remditta is not, however, able to explain his presence satisfactorily. Mathia Ram is a maternal cousin of the petitioner and he alone speaks of the threat of expulsion from Biradari as is the allegation in particulars. Ramditta does not however bear him out on this point. Hargobind Singh has contradicted those witnesses and we do not feel impressed by their evidence and so find the issue No. 11 in the negative.

41. Issues Nos. 12, 13 and 14.—In particulars 11, 12 and 13 the petitioner made allegations about Nand Lal of Ghamani and Nand Lal of Jandot alleged to be Panch and Sarpanch respectively and of Dina Nath as Sub Judge having assisted the respondent No. 1 in influencing Hardial Singh to make him withdraw his candidature. According to the petitioner even Panch and Sarpanch would be Government servants which Dina Nath as a Sub Judge undoubtedly was. Accordingly the obtaining of the assistance of these persons was said to make the corrupt practice under Section 123(8). Our findings have been that Hardial Singh was not influenced by any of these persons and we must accordingly find the issues 12, 13 and 14 in the negative.

42. Issue No. 15.—This issue arises out of particular No. 14 that "on 14th October 1951 respondent No. 1 obtained assistance of Shri Prem Lal, Civil Supply Officer, for inducing Dharam Dass, Organiser Bilaspur Socialist Party not to stand for the election. This Dharam Dass is P.W. 2. He had stated that he had intended to stand for election but on 13th or 14th of October he was called by Shri Prem Lal who had already started some proceedings against him and was told not to file his nomination paper reminding also that proceedings had been started against him because he had expressed his intention to stand as candidate. We find from the evidence of Amba Parsad a Sub Inspector of the Civil Supply Department that the department had lodged a report with the police about certain mal practices of Dharam Dass as dealer. We may take it that this report was at the instance of the Civil Supply Officer Shri Prem Lal. According to Amba Parsad the report had been lodged on 1st August 1951. The police inquired into it and finding no case made out for being put up in court dropped investigation on 11th December 1951. Dharam Dass wants to relate his non-participation in the election to this threatened prosecution by Prem Lal. The proceedings had been started on the 1st of August when nobody perhaps thought of the elections. We have nothing to show that respondent No. 1 had then entertained any idea of being in the election and had requested Prem Lal to take action against other possible candidates. In order to show that Prem Lal's report of 1st August was made with the object of influencing him, Dharam Dass has stated that he had given out his intention of offering himself as candidate even in July 1951. We find ourselves unable to believe this. Dharam Dass, according to his statement, was Organiser of the Praja Socialist Party in Bilaspur State and wanted to be that Party's candidate in this election. For that purpose he says he had written to the Headquarters of the Party at Jullunder for a ticket and for necessary help.

He has placed before us a letter which he had received from Jullunder approving of him as the Party's candidate. This letter is dated 29th September 1951. It does not mention the date of Dharam Dass's letter to which it is a reply and we have nothing to show that Dharam Dass was in correspondence about his candidature before 1st of August so as to infer that the report to the Police might have been made with the idea of bringing pressure on him. We do not believe his uncorroborated evidence that he had started canvassing in July or that on 14th October Prem Lal had called him and told him to desist from filing nomination on pain of the case being put in court against him. We find issue XV also in the negative.

43. *Issues Nos. 16 and 17.*—No corrupt practice is thus established and there is no case for disturbing the election. The objections to the return of election expenses were not even referred to in the arguments—it being apparently realized that the omission to include a few small items could not be regarded as rendering the return false in material particulars when there was a large margin between the amount of expenses shown as actually incurred and the maximum Rs. 5,000 permissible.

44. *Issue No. 18.*—In the result therefore we find that the petitioner has failed to make out a case for setting aside the election and the petition should be dismissed. We hereby dismiss it and order the petitioner to pay the costs of the respondents which we assess at Rs. 200 for respondent No. 1 and Rs. 50 each for respondents Nos. 2 and 3.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) DURGA PRASAD NAIR, *Member.*

The 2nd May 1953.

I concur and would like to add a few words. Mr. Tek Chand to whom the Tribunal is indebted for his very able presentation of the petitioner's case, urged three main points:—

- (1) that the respondent No. 1 was disqualified under Section 102(a) of the Constitution from contesting the election by reason of his holding an "Office of Profit" under the Government of India;
- (2) that the said respondent had offered "gratification" to B. Hardial Singh to withdraw from the election; and lastly
- (3) that the same respondent had fed the Panchas of the State on the 2nd of October 1951 with a view to canvass support for his candidature and he was thus guilty of a corrupt practice.

On the first point the learned counsel referred to the definition of 'Ruler' contained in Art. 366(22) of the Constitution of India. He emphasized that a 'Ruler' is a Ruler so long as he is recognised as such by the President; the moment recognition is withdrawn his privileges as a Ruler come to an end and he ceases to be entitled to his Privy Purse. In view of the above he urged that the respondent No. 1 must be held to be holding an "office of profit". The rights and privileges of the respondent No. 1 flow from the Instrument of Merger executed by him and even though these privileges etc have been modified in a vital respect by the Constitution of India, the Instrument in question must be looked at or a proper decision of the point in dispute. Under the Instrument the respondent No. 1 transferred his powers of governance and administration of the State to the Government of India but reserved to himself for his Privy Purse a sum of Rs. 70,000 a year from the revenues of the State. It would not be a correct way of looking at the matter to say that the Government of India had agreed to allow Rs. 70,000 a year to the respondent No. 1 in consideration of his surrendering his powers of governance and administration of the State. The correct way, to my mind, of looking at the matter is that the Privy Purse represents the "reserved", or so to say, the unalienated portion of the revenues of the State. It was not a Political Pension of a Jagir which was granted to the respondent No. 1 by the Government of India. There was thus no question of the respondent No. 1 holding an office of profit under the Government of India.

The legal position to my mind is so clear that a reference to Section 168 of the Representation of the People Act appears to be hardly necessary. This section provides for suspension of certain privileges of the Rulers in case they choose to stand for election to Parliament or to a State Assembly. If the Rulers as a class are disqualified from contesting elections the legislature would not have found it necessary to make any provision for suspension of their rights and privileges when standing for election. The section, is, therefore, relevant to show that in the opinion of the legislature the Rulers are not disqualified from contesting elections. If it had been clear that a Ruler in receipt of a Privy Purse is holder of an "office of Profit" within the meaning of the term as used in Art. 102(a) of the Constitution, Section 168 could not have helped the respondent No. 1 but if there is any ambiguity about the meaning of the term in question Section 168 of the R. P. Act is certainly helpful from the point of view of the respondent No. 1. He must, therefore, be held not to be disqualified from contesting the election by reason of the above mentioned provision in the Constitution of India.

As regards the second point the direct evidence produced in support of the allegation of bribery is so utterly unbelievable that the learned counsel for the petitioner had to rely more on the circumstances attending the withdrawal of candidature by B. Hardial Singh than on the oral evidence led in support of the charge. The witnesses are all either neighbours or colleagues of the petitioner. The delicate matters of the character alluded to in the statements of the P.Ws should have been discussed in the presence of avowed enemies of the Ruler. It was, however, urged that B. Hardial Singh could not possibly have acted as he had done but for some corrupt inducement. There had, it was pointed out, been no such catastrophic deterioration in the prospects of success of the congress candidate over-night as to warrant the extreme step of withdrawal of candidature by B. Hardial Singh. Dissensions in the local Congress Camp had been in evidence long before the 15th October and nothing but some extraneous influence could, it was urged have induced B. Hardial Singh to withdraw. This argument is not without force but at best it suggests one possible explanation for the conduct of B. Hardial Singh and unless the Tribunal can rule out all other possibilities it cannot hold that B. Hardial Singh was proved to have withdrawn because of the promise made by or at the instance of respondent No. 1. As matters stand the possibility of B. Hardial Singh having them the step in a moment of despair cannot be ruled out. He perhaps realized that the success of the respondent No. 1 was a foregone conclusion and that the interest of his party to which he belonged would be better served by his not contesting the election. He may thus have acted as he had done in the best interests of his party according to his lights rather than from any dishonest motive. His judgment in this respect may have been faulty but that was a different matter. The question is not as to how some one else would have reacted to the conditions prevailing on or about the 2nd of October but as to how B. Hardial Singh had done. The Tribunal is concerned with the state of mind of B. Hardial Singh only. It is unfortunate that B. Hardial Singh died before the Tribunal could have the benefit of hearing his detailed statement on this point but obviously this circumstance could not be used to the disadvantage of respondent No. 1. In my opinion, therefore, not much importance can be attached to the so called attendant circumstances and since the oral evidence is worthless, the petitioner must be held to have utterly failed to prove the charge of bribery.

Lastly as to the entertainment of the Panchas on the 2nd of October. It is necessary to emphasize in this connection that a corrupt intention is a necessary ingredient to change innocent treating into bribery. Where the entertainment does not exceed the limits of customary hospitality it does not constitute bribery. The status of persons invited, the occasion for the invitation, the relations subsisting between the host and the invitees and the possibility or otherwise of the invitees being influenced by the offer of food and drinks are all relevant matters in this connection. It is not denied that the Ruler had entertained prominent people of his State on previous occasions as well and it is not suggested that there was anything extraordinary in the hospitality extended to the Panchas on the 2nd of October. It was just of a routine character. Moreover all the Panchas including those who were hostile to the Ruler had been invited. It was difficult under the circumstances to take the view that the invitation had been extended with any corrupt intention of influencing the Panchas in the matter of votes. The respondent No. 1 has stated that he finally made up his mind on the 5th of October after interviewing the Prime Minister at Delhi and that there was consequently no question of his approaching the Panchas on the 2nd of October for support. In view of this statement and of the fact that the entertainment did not exceed the

limits of customary hospitality it would not be a fair inference from the circumstances that the respondent No. 1 had invited the Panchas with a view to influence them in the matter of voting at the coming election. The charge of treating, therefore, must also fail.

The petition must, therefore, be dismissed with costs.

(Sd.) PARSHOTAM LAL, Member

Election Tribunal, Bilaspur

The 2nd May 1953.

[No. 19/2/52-Elec.III/6778.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.